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CORPORATION

7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**

11 LEIGH PATTERSON, an individual,

12 Plaintiff,  
13 v.

14 COSTCO WHOLESALE CORPORATION, a  
Corporation, CHERYL “DOE”, and individual,  
15 and DOES 1 through 25, inclusive,

16 Defendants.

Case No.

[Humboldt County Superior Court Case  
No. CV2200529]

**DEFENDANT COSTCO  
WHOLESALE CORPORATION’S  
NOTICE OF REMOVAL TO  
FEDERAL COURT PURSUANT TO  
28 U.S.C. § 1441(b) [DIVERSITY]**

Complaint Filed: April 19, 2022

19 **TO THE HONORABLE JUDGES AND CLERK OF THE COURT:**

20 **PLEASE TAKE NOTICE** that Defendant COSTCO WHOLESALE CORPORATION  
21 (“Costco”) hereby removes to this Court the state court action described below:

22 **I. STATUS OF PLEADINGS AND DISCOVERY**

23 On or about April 19, 2022, Plaintiff LEIGH PATTERSON (“Plaintiff”) filed a Complaint  
24 against Costco, CHERYL “DOE”, and Does 1 to 25 in Humboldt County Superior Court, entitled  
25 LEIGH PATTERSON, an individual, v. COSTCO WHOLESALE CORPORATION, a  
26 Corporation, LYNNETTE “DOE”, an individual, and DOES 1-25, inclusive, Case No.  
27 22CV008571 (the “Complaint”). (Request for Judicial Notice in Support of Costco’s Notice of  
28

1 Removal (“RJN”), Ex. A; Declaration of Sharon C. Collier (“Collier Decl.”) at ¶ 3.) The Complaint  
 2 alleges causes of action for negligence and premises liability. (RJN, Ex. A.) Costco was served  
 3 with the Summons and a copy of the Complaint on or about May 19, 2022. (RJN, Ex. A; Collier  
 4 Decl. at ¶ 3.) In conjunction with receiving the Complaint, Costco also received a statement of  
 5 damages claiming damages totaling \$2 million, far exceeding the \$75,000 jurisdictional threshold.  
 6 (Collier Decl. at ¶ 4.)

7 The Complaint alleges that on or about April 30, 2020, Plaintiff fell at a Costco warehouse  
 8 in Humboldt, California, and sustained injuries. (RJN, Ex. A.) Plaintiff seeks damages for pain and  
 9 suffering, medical and incidental expenses, lost wages, and lost earning capacity. (RJN, Ex. A.)

10 Costco filed an Answer to Plaintiff’s Complaint in Case No. 22CV008571 of the Humboldt  
 11 County Superior Court contemporaneously with this Notice of Removal and supporting documents.  
 12 (RJN, Ex. C; Collier Decl. at ¶ 5.) In the Answer, Costco asserted a general denial, as well as  
 13 various affirmative defenses. (RJN, Ex. B.)

14 Costco is not aware of Plaintiff effectuating service on any of the “Doe” defendants.  
 15 (Collier Decl. at ¶ 6.) Since no other defendant has been properly named and served, no consent is  
 16 required for removal. (28 U.S.C. § 1446(b); *Destfino v. Reiswig*, 630 F.3d 952, 956 (9th Cir.  
 17 2011).)

18 As this action was commenced in the Humboldt County Superior Court, removal to the  
 19 Northern District of California is appropriate.

20 **II. STATEMENT OF JURISDICTION**

21 This civil action involves parties who are citizens of different states and the amount in  
 22 controversy exceeds \$75,000. Accordingly, this Court has jurisdiction under 28 U.S.C. § 1332, and  
 23 has the power to remove this matter to this Court pursuant to 28 U.S.C. section 1441(b).

24 **A. Complete Diversity of Citizenship**

25 In order to invoke federal diversity jurisdiction pursuant to 28 U.S.C. section 1332,  
 26 complete diversity of citizenship must exist between the parties. (*Matao Yokeno v. Sawako  
 27 Sekiguchi*, 754 F.3d 649, 652 (9th Cir. 2014).) Here, Plaintiff and Costco are citizens of different

1 states and the citizenship of the “Doe” defendants must be disregarded. Thus, diversity of  
 2 citizenship exists between the parties.

3       For purposes of removal, “the citizenship of defendants sued under fictitious names shall be  
 4 disregarded.” (28 U.S.C. § 1441(b).) Where a plaintiff’s allegations do not provide definite clues  
 5 sufficient for the moving defendant to identify the fictitiously named defendant, the citizenship of  
 6 the fictitiously named defendant shall be disregarded. (See e.g., *Guytan v. Swift Transportation Co.*  
 7 *of Arizona, LLC*, No. CV1700626VAPDTBX, 2017 WL 2380159, at \*2 (C.D. Cal. June 1, 2017)  
 8 (holding that identifying a fictitiously named defendant as “a terminal manager” of the moving  
 9 defendant in the complaint was insufficient to determine the identity of the fictitiously named  
 10 defendant and therefore, the fictitiously named defendant’s citizenship must be disregarded.) While  
 11 Plaintiff sued a Lynnette “DOE” and Does 1-50, she has not named them specifically, Costco is  
 12 unaware of Plaintiff effectuating service on them. Thus, the citizenship of the “Doe” defendants  
 13 must be disregarded.

14       For diversity purposes, a person is a “citizen” of the state in which he or she is domiciled.  
 15 (*Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983).) A person’s domicile is  
 16 the place he or she resides with the intention to remain or to which he or she intends to return.  
 17 (*Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).) Here, Plaintiff alleges in her  
 18 Complaint that she is a resident of Humboldt County, California. (RJN Ex. A; Collier Decl. at ¶  
 19 10.) Accordingly, Plaintiff is and was a citizen of the State of California.

20       In order to ascertain the citizenship of a corporation, courts look to the state of  
 21 incorporation, and the state where the corporation has its principal place of business. (28 U.S.C.  
 22 § 1332(c)(1).) Here, Costco is a corporation formed and incorporated under the laws of the State of  
 23 Washington. (RJN, Ex. D; Collier Decl. at ¶ 8.) Moreover, Costco is headquartered and maintains  
 24 its principal place of business at 999 Lake Drive, Issaquah, Washington 98207. (RJN, Ex. E;  
 25 Collier Decl. at ¶ 9.) Accordingly, Costco was and is a citizen of the State of Washington. As such,  
 26 diversity-of-citizenship exists between the parties.

27

28

1           **B. No Resident Defendants**

2           Pursuant to 28 U.S.C. § 1441(b)(2), when removing a case to federal court on the basis of  
 3 diversity jurisdiction, none of the defendants may be “citizens of the State in which such action is  
 4 brought.” In this case, Plaintiff resides in California. (RJN, Ex. A; Collier Decl. at ¶ 10.) The only  
 5 named and served defendant, Costco, is a citizen of the State of Washington. (RJN, Ex. C, D;  
 6 Collier Decl. at ¶ 8.) As the domicile of the “Doe” defendants must be disregarded, complete  
 7 diversity exists because no defendant resides in the State of California.

8           **C. Amount in Controversy**

9           Pursuant to 28 U.S.C. § 1332(a), in order to invoke diversity jurisdiction, the amount in  
 10 controversy must exceed \$75,000, exclusive of interests and costs. (28 U.S.C. § 1332(a).) When a  
 11 plaintiff fails to “specify a particular amount of damages” in the complaint, the removing party is  
 12 required to establish that it is “more likely than not” that the amount in controversy exceeds the  
 13 statutory amount. (*Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992); *McPhail v. Derre & Co.*,  
 14 (10th Cir. 2008) 529 F.3d 947, 954 (removing defendant must prove by a preponderance of the  
 15 evidence that the amount in controversy is satisfied).) In making that determination, courts  
 16 consider compensatory costs, including general and special damages, as well as attorney fees.  
 17 (*Meisel v. Allstate Indem. Co.*, 357 F.Supp.2d 1222, 1225 (E.D. Cal. 2005).) Courts also consider  
 18 “other papers” not filed with the court. (*Kuxhausen v. BMW Financial Services NA LLC*, 797 F.3d  
 19 1136, 1140 (9th Cir. 2013).) Settlement demand correspondence constitutes an “other paper”  
 20 sufficient to provide notice of removal. (*Bloomer v. Serco Mgmt. Servs.*, No. EDCV 16-2651 JGB  
 21 (RAOx), 2017 U.S. Dist. LEXIS 25606, at \*8 (C.D. Cal. Feb. 23, 2017) (citing *Babasa v.*  
 22 *Lenscrafters, Inc.*, 498 F.3d 972, 974-75 (9th Cir. 2002)); *see also Ackerberg v. Citicorp USA, Inc.*,  
 23 887 F. Supp. 2d 934, 938-39 (N.D. Cal. 2012).) The amount in controversy is merely an estimate of  
 24 the total amount in dispute; it is not a prospective assessment of the defendant’s liability. (*Lewis v.*  
 25 *Verizon Communications, Inc.*, 627 F.3d. 395, 400 (9th Cir. 2010).)

26           A plaintiff’s concession that the amount in controversy exceeds \$75,000 is sufficient to  
 27 establish diversity jurisdiction upon this Court. (See *Singer v. State Farm Mut. Auto Ins. Co.*, 116

1 F.3d 373, 376 (“...where state law prohibited plaintiff from stating the amount in controversy in  
 2 the complaint, the district judge has discretion to accept the admission as establishing it.  
 3 Otherwise, we would be adopting the illogical position that a plaintiff can establish the amount in  
 4 controversy by an ad damnum, but not by a formal admission against the plaintiff’s interest in  
 5 choice of forum.”). Such a concession is tantamount to a plaintiff expressly alleging damages in  
 6 excess of the jurisdictional amount, which we accept as the amount in controversy if done in good  
 7 faith. (*See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551 (2014).)  
 8 Moreover, the courts looks to “facts presented in the removal petition as well as any summary  
 9 judgment type evidence relevant to the amount in controversy at the time of removal.” (*Matheson*  
 10 *v. Progressive Specialty Ins., Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003); *Johnson v. Am. Online,*  
 11 *Inc.*, 208 F.Supp.2d 1018 (N.D. Cal. 2003) (A defendant may rely on discovery responses for  
 12 determining the amount in controversy.).)

13 In the present case, Costco received in conjunction with the Complaint a statement of  
 14 damages alleging that Plaintiff’s damages total more than \$2 million. (RJN, Exhibit B; Collier  
 15 Decl. at ¶ 4.) Thus, Plaintiff’s claimed damages far exceed \$75,000. (RJN, Exhibit B; Collier Decl.  
 16 at ¶¶ 4, 12.) The statement of damages clearly constitutes an “other paper” which may be  
 17 considered for purposes of determining the amount in controversy here. (*Ackerberg v. Citicorp*  
 18 *USA, Inc.*, 887 F. Supp. 2d 934, 938-39 (N.D. Cal. 2012).) In light of these representations and the  
 19 scope of injuries and types of damages alleged in the Complaint, it is clear that the claims at issue  
 20 will exceed the jurisdictional minimum of this Court.

21 **III. TIMELINESS OF REMOVAL**

22 Pursuant to 28 U.S.C. section 1446(b), “[t]he notice of removal shall be filed within 30 days  
 23 after receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting  
 24 forth the claim for relief upon which such action or proceeding is based...” (28 U.S.C. § 1446(b).)  
 25 The 30-day time limit within which a defendant can remove an action to federal court does not  
 26 begin until the defendant(s) have received notice of the facts supporting removal. (*Mattel, Inc. v.*  
 27 *Bryant*, 441 F. Supp. 2d 1081, 1089-1090 (C.D. Cal. 2005), *aff’d*, 446 F.3d 1011 (9th Cir. 2006).)

1 As set forth more fully above, Costco was served with the Complaint and Statement of  
 2 Damages on or about April 5, 2022. (RJN, Ex. A; Collier Decl. at ¶¶ 3-4.) The Complaint indicates  
 3 Plaintiff is domiciled in California and the settlement demand alleges the amount in controversy  
 4 exceeds the jurisdictional minimum. (RJN, Ex. A, B; Collier Decl. at ¶¶ 4, 10, 12.) Accordingly,  
 5 Costco has timely and promptly filed this petition for removal. (28 U.S.C § 1446.)

6 **IV. JOINDER OF ALL DEFENDANTS**

7 In order to effectuate removal, all defendants properly joined and served with the complaint  
 8 must join in the notice of removal. (28 U.S.C. § 1446(b); *Emrich v. Touche Ross & Co.*, 846 F.2d  
 9 1190, 1193 (9th Cir. 1988).) In this case, Costco is not aware of Plaintiff effectuating service on  
 10 the “Doe” defendants. (Collier Decl. at ¶ 6.) Accordingly, this Notice of Removal is proper.

11 **V. VENUE**

12 Venue of this removed action is proper pursuant to 28 U.S.C. section 1441(a) because this  
 13 Court is the United States District Court for the district corresponding to the place where the state  
 14 court action was commenced.

15 **VI. NOTICE TO PLAINTIFF**

16 Costco’s Notice to Adverse Parties of Notice of Removal is being contemporaneously filed  
 17 in Case 22CV008571 of the Humboldt County Superior Court. (Collier Decl. at ¶ 13.)

18 WHEREFORE, Costco prays that the above-entitled action, currently pending in the  
 19 Humboldt County Superior Court of California, be removed to the United States District Court for  
 20 the Northern District of California, and that this action proceed in this Court as an action properly  
 21 removed there.

22 Dated: June 21, 2022

FREEMAN MATHIS & GARY, LLP

24  
25 By:



Sharon C. Collier  
Attorneys for Defendant COSTCO  
WHOLESALE CORPORATION

## **PROOF OF SERVICE**

I am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action. My business address is 1255 Treat Blvd, Suite 300, Walnut Creek, California 94597. My electronic service email address is javi.brantley@fmglaw.com

On June 21, 2022, I served electronic copies of the within document(s) described as:

## **DEFENDANT COSTCO**

**WHOLESALE CORPORATION'S NOTICE OF REMOVAL TO  
FEDERAL COURT PURSUANT TO 28 U.S.C. § 1441(b) [DIVERSITY]**

on the interested parties in this action as stated below:

**John N Metri, Esq.  
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Los Angeles, CA 90004  
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*Attorney for Plaintiff Leigh Patterson*

(BY E-MAIL) Pursuant to CCP 1010.6, subdivision (e) by transmitting a true copy of the foregoing document(s) to the e-mail addresses set forth above per electronic service agreement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 21, 2022, at Martinez, California.

Javi Brantley  
(Type or print name)

*[Signature]*

(Signature)